

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GOLDCROWN PROPERTIES, INC. and GOLD	}	
CROWN PROPERTIES, INC. TEXAS, Plaintiffs	}	
	}	
V.	}	CIVIL ACTION NO. 3:17-CV-527
	}	
MUTUAL OF OMAHA BANK d/b/a COMMUNITY	}	
ASSOCIATION BANK, Defendant.	}	

Plaintiffs' Response to Motion for Summary Judgment

Pursuant to Rule 56(b) of the Federal Rules of Civil Procedure and Local Rule 56.4, Plaintiffs file this Response to Defendant's Motion for Summary Judgment.

1.0 Summary of Response

1.1 Defendant's Motion for Summary Judgment is based on the premises that (1) The Mutual of Omaha Bank is not a "savings bank" and the Texas Finance Code does not apply; (2) Some of the "Terms and Conditions" provisions authorizes the Bank to freeze funds; (3) Nebraska law controls; and (4) The Texas Finance Code does not allow a private cause of action.

1.2 Defendant's Summary Judgment proof is flawed and subject to multiple objections. Portions of Julie Krill's affidavit (the only Summary Judgment evidence provided) should be disregarded. The objections include improper foundation, conclusory statements, impermissible opinion and speculation, lack of personal knowledge and that portions of the evidence is based on impermissible hearsay including the attached documents.

1.3 These premises are incorrect. the Bank is a savings bank, Chapter 95 of the Texas Finance Code does apply and allows a private cause of action; The "Terms and Conditions" provisions

relied on by the Bank is unenforceable; and Texas law applies (which negate any asserted claims or defenses pursuant to Nebraska law including negligence, negligence *per se*, conversion, “economic loss” rule and attorney fees).

2.0 Conclusion

2.1 Based on the admissible evidence, legal arguments and authorities set forth in Plaintiff’s brief in support of the response to Defendant’s Motion for Summary judgment, as well as evidence contained in Plaintiff’s Appendix in support thereof, Plaintiffs request that this court deny Defendant’s motion for Summary judgment, and for such other relief to which Plaintiffs are justly entitled.

Respectfully submitted,

/s/ Matt McKool

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Certificate of Service

This is to certify that on November 12, 2108, a true and correct copy of the foregoing document was forwarded to the following counsel of record as follows:

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/s/ Matt McKool

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